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5 Attorney for the Plaintiffs
6

7 JANA HILL, a single woman,
8 LINDSAY PERSON, a single woman,
9 and ANDREW ATKINS, a single man,
10 Plaintiffs, } COMPLAINT AND DEMAND FOR
11 v. } JURY TRIAL
12 KENNETH V. FREDERICK, P.S., a } NO: CV-09-248-LRS
13 Washington corporation, KENNETH V. }
14 FREDERICK and JANE DOE }
15 FREDERICK, as individuals and the }
marital community comprised thereof. }
Defendant. }

16 I. INTRODUCTION

17 1.1. This is an action for actual and statutory damages brought by Plaintiffs
18 JANA HILL, LINDSAY PERSON, and ANDREW ATKINS against
19 Defendant KENNETH V. FREDERICK, P.S., for violations of the Fair
20 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
21 “FDCPA”), which prohibits debt collectors from engaging in abusive,
22 deceptive, and unfair practices.

II. JURISDICTION

2.1. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business in this District and the conduct complained of occurred in this district as well.

III. PARTIES AND SUBJECT MATTER JURISDICTION

3.1. Plaintiff Jana Hill is a consumer as defined by 15 U.S.C. § 1692a(3). She is a natural person residing in the County of Spokane, State of Washington.

3.2. Plaintiff Andrew Atkins is a consumer as defined by 15 U.S.C. § 1692a(3). He is a natural person residing in the County of Spokane, State of Washington.

3.3. Defendant KENNETH V. FREDERICK, P.S., (hereinafter “defendant”), is a Washington State corporation engaged in the business of collecting debt in this State with its principal place of business located at 1318 E. 19th Ave. Spokane, WA 99203.

- 1 3.4. The Washington corporation Kenneth V. Frederick, P.S. is an alter ego of
2 Kenneth V. Frederick. All acts and omissions on the part of Kenneth V.
3 Frederick, P.S. were performed on behalf of Kenneth V. Frederick and
4 Jane Doe Frederick, as individuals and the marital community comprised
5 thereof.
- 6 3.5. Defendant Fredrick, P.S. was attempting to collect a “debt” as defined by
7 FDCPA, 15 U.S.C. §1692a(5).
- 8 3.6. The alleged debt of the Plaintiffs was an alleged obligation of plaintiff to
9 pay money arising out of a transaction primarily for personal, family, or
10 household purposes.
- 11 3.7. The alleged debt of the Plaintiff was for back due rent from a residential
12 tenancy.
- 13 3.8. Defendant Fredrick, P.S. regularly collects or attempts to collect, directly
14 or indirectly, debts owed or due or asserted to be owed or due another
15 using the telephone and mail.
- 16 3.9. Defendant Kenneth Fredrick was attempting to collect a “debt” as
17 defined by FDCPA, 15 U.S.C. §1692a(5).

1 3.10. The alleged debt of the Plaintiffs was an alleged obligation of plaintiff to
2 pay money arising out of a transaction primarily for personal, family, or
3 household purposes.
4

5 3.11. The alleged debt of the Plaintiff was for back due rent from a residential
6 tenancy.
7

8 3.12. Defendant Kenneth Fredrick regularly collects or attempts to collect,
9 directly or indirectly, debts owed or due or asserted to be owed or due
10 another using the telephone and mail.
11

12 3.13. Defendant Kenneth Fredrick. is a “debt collector” as defined by the
13 FDCPA, 15 U.S.C. § 1692a(6).
14

IV. FACTUAL ALLEGATIONS

15 4.1. Plaintiff Jana Hill and her then husband Paul Pitts, entered into a lease
16 agreement for a mobile home space with Shenandoah Forest Mobile
17 Home Park (hereinafter “Shenandoah”).
18

19 4.2. The lease agreement provided for a monthly rental charge, to be paid by
20 Jana Hill and Paul Pitts to Shenandoah, in the amount of three hundred
21 dollars (\$300.00).
22

23 4.3. On or about December, 2007, the monthly rental charge was increased to
24 three hundred thirty dollars (\$330.00) per month.
25

4.4. Sometime after February 1, 2007, at the invitation of plaintiff Jana Hill, plaintiffs Lindsay Person, Ms. Hill's daughter, and Andrew Atkins, Ms. Person's boyfriend, moved into the Shenandoah rental space.

4.5. Neither Ms. Person, nor Mr. Atkins entered into any agreement with Shenandoah to become obligors for rent or any other fees or charges.

4.6. Plaintiff Jana Hill paid the monthly rental charges for February 2007 through August 2008 to Shenandoah.

4.7. On August 11, 2009, a “Five Day Notice,” (hereinafter “the notice”), drafted by defendant, was delivered to the residence located in the residence at the Shenandoah Forest Mobile Home Park, at defendant’s direction on behalf of Shenandoah.

4.8. Only one copy of the notice was delivered to the residence at the Shenandoah Mobile Home Park.

4.9. On information and belief, at the time the notice was served, Defendant was aware that Shenandoah's bookkeeping records were incomplete and/or erroneous.

4.10. The notice demands payment of rent for the months of February 2007 through August 2008, late fees in the amount of fifty dollars (\$50.00) per

1 month for the months of February 2007 through August 2008, attorney
2 fees, and costs.
3

4 4.11. In addition, the notice states the following:
5

6 You are hereby notified and required to pay the above total to
7 the undersigned within five (5) days from the date of the service
8 of this Notice upon you, or in the alternative to vacate and
9 surrender the premises.
10

11 IN THE EVENT OF YOUR FAILURE to do so within the
12 stated period, you will be guilty of unlawful detainer and
13 subject to eviction as provided by law. Attorney fees, costs and
14 charges will increase and be charged to you upon your failure to
15 pay or vacate within 5 days.
16

17 4.12. One copy of an Eviction Summons and Complaint were delivered to the
18 residence at Shenandoah Mobile Home Park on August 19, 2009. The
19 Complaint seeks relief in the form of restitution of the premises,
20 forfeiture and termination of the lease, damages, rent, costs, and attorney
21 fees.
22

23 **V. FIRST CLAIM FOR RELIEF – 15 USC § 1692f**
24

25 5.1. Plaintiffs repeat, reallege and incorporate by reference to the foregoing
5.1. paragraphs.
5.2.

5.2. 15 USC §1692f states, in pertinent part:

1 A debt collector may not use unfair or unconscionable means to
2 collect or attempt to collect any debt. Without limiting the
3 general application of the foregoing, the following conduct is a
4 violation of this section:

5 (1) The collection of any amount (including any interest,
6 fee, charge, or expense incidental to the principal obligation)
7 unless such amount is expressly authorized by the agreement
8 creating the debt or permitted by law.

9 5.3. Lindsay Person and Andrew Atkins were not obligors on any agreement

10 with Shenandoah, or any other person or entity, to pay rent, late fees,
11 legal fees, or costs to Shenandoah.

12 5.4. Defendant violated 15 USC §1692f when it attempted to collect a debt

13 from Lindsay Persons and Andrew Atkins for which they were not, and
14 are not, liable.

15 5.5. Defendant violated 15 USC §1692f when it attempted to collect late fees,

16 legal fees and costs, not authorized by contract or law.

17 VI. SECOND CLAIM FOR RELIEF – 15 USC § 1692e

18 6.1. Plaintiffs repeat, reallege, and incorporate by reference to the foregoing

19 paragraphs.

20 6.2. 15 USC §1692e states in pertinent part: “A debt collector may not use

21 any false, deceptive, or misleading representation or means in connection
22 with the collection of any debt.”

1 6.3. RCW 59.12.030 states in pertinent part:

2 A tenant of real property for a term less than life is guilty of
3 unlawful detainer either:

4 (3) When he or she continues in possession in person or by
5 subtenant after a default in the payment of rent, and after notice
6 in writing requiring in the alternative the *payment of the rent or*
7 *the surrender of the detained premises*, served (in manner in
8 RCW 59.12.040 provided) in behalf of the person entitled to the
9 rent upon the person owing it, has remained uncomplied with
for the period of three days after service thereof... (emphasis
added).

10 6.4. Defendant violated 15 USC §1692e by stating in the notice that payment
11 of rent, late fees, costs, and attorney fees is required “or in the alternative
12 [the plaintiffs must] vacate and surrender the premises” when, in fact,
13 only payment of rent is required by RCW 59.12.030(3)

15 **VII THIRD CLAIM FOR RELIEF – 15 USC § 1692f**

16 7.1. Plaintiffs repeat, reallege, and incorporate by reference to the foregoing
17 paragraphs.

19 7.2. Defendant violated 15 USC §1692f(1) by attempting to collect a debt
20 (rent) that he knew or should have known had been paid by plaintiff Jana
21 Hill.

23 7.3. Defendant violated 15 USC §1692f(1) by attempting to collect a debt
24 (rent) owed to Shenandoah when knowing or should have known that

1 Shenandoah's bookkeeping with respect to rental payments was
2 inaccurate or incomplete.
3

4 **VIII. DAMAGES**

5 8. As a result of the foregoing violations of the FDCPA, defendants are
6 liable to the Plaintiffs for declaratory judgment that Defendants' conduct
7 violated the FDCPA, actual damages, statutory damages, injunction, and
8 costs and attorney fees.
9

10 **WHEREFORE**, plaintiffs respectfully requests that judgment be entered
11 against defendant for the following:

- 12 8.a. Declaratory judgment that Defendants' conduct violated the FDCPA;
13
14 8.b. Actual damages;
15
16 8.c. Statutory damages pursuant to 15 U.S.C. § 1692k;
17
18 8.d. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k;
19
8.e. For injunctive relief, restitution, and disgorgement of ill-gotten gains; and
20
8.f. For such other and further relief as the Court may deem just and proper.

21 Respectfully submitted,
22

23 DATED this 10th day of August, 2009
24

/S/ Kirk D. Miller

Kirk D. Miller, WSBA # 40025
Attorney for Plaintiffs

COMPLAINT
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